

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BRETT HECKMANN
Plaintiff,

v.

C.A. No. 1:19-cv-00472-JJM-PAS

BRENDAN MCDONALD,
JASON DIGRADO,
GARY MCDOLE AND
CHRISTOPHER KELLY,
Individually and in their official
Capacities as police officers of the
Town of Smithfield, Rhode Island
Defendants.

DEFENDANTS' ANSWER

Now come Defendants, Defendants, Brendan McDonald, Jason Digrado, Gary McDole and Christopher Kelly, individually and in their official capacities as police officers of the Town of Smithfield, Rhode Island and answer Plaintiff, Brett Heckmann's complaint as follows:

As to "Introduction"

1. Defendants deny the allegations contained in the unnumbered Paragraphs of that portion of the Plaintiff's complaint entitled "Introduction".

As to "Jurisdiction"

2. Defendants admit the allegations contained in the unnumbered Paragraph of that portion of the Plaintiff's complaint entitled "Jurisdiction".

As to "Factual Allegations"

3. Defendants admit the allegations contained in Paragraph Nos. 1, 3 and 5 of that portion of the Plaintiff's complaint entitled "Factual Allegations".
4. Defendants admit the allegations contained in Paragraph No. 2 of that portion of the Plaintiff's complaint entitled "Factual Allegations" that they are police officers for the

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Smithfield Police Department but object and contest suit being brought in their individual capacities.

5. Defendants deny the allegations contained in Paragraph Nos. 4, 6, 7, 8, 9, 10, 11, 12 and 13 of that portion of the Plaintiff's complaint entitled "Factual Allegations".
6. Defendants make no response to the allegations contained in Paragraph Nos. 14, 15, 16, 17 and 18 and leave Plaintiff to his proof of same.

As to "Count One: 42 U.S.C. §1983 Excessive Force"

7. Defendants reassert and incorporate their responses to all of the allegations contained in Paragraph Nos. 1 through 18 as said allegations are incorporated in Paragraph No. 19.
8. Defendants deny the allegations contained in Paragraph Nos. 20, 21, 22 and 23 of that portion of the Plaintiff's complaint entitled "Count One".

As to "Count Two: Assault and Battery"

9. Defendants reassert and incorporate their responses to all of the allegations contained in Paragraph Nos. 1 through 23 as said allegations are incorporated in Paragraph No. 24.
10. Defendants deny the allegations contained in Paragraph Nos. 25, 26, 27 and 28 of the Plaintiff's complaint entitled "Count Two".

AFFIRMATIVE DEFENSES

These Defendants affirmatively pleads the following defenses:

FIRST AFFIRMATIVE DEFENSE

Defendants plead absolute and qualified immunity to the within complaint.

SECOND AFFIRMATIVE DEFENSE

Defendants plead all forms of statutory and common law immunity including the public duty doctrine to the within complaint.

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THIRD AFFIRMATIVE DEFENSE

Defendants plead the statutory cap on damages as a bar and restriction on the amount of damages recoverable in this matter.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's injuries were caused and contributed to by his own conduct for which these Defendants are not liable.

FIFTH AFFIRMATIVE DEFENSE

The Defendants object and contest suit being brought in their individual capacity.

SIXTH AFFIRMATIVE DEFENSE

Defendants state failure to state a cause of action against the named Defendants in their individual capacities.

Defendants demand a trial by jury.

Defendants,
By their Attorney,

/s/ Marc DeSisto
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CERTIFICATION OF SERVICE

I hereby certify, that on this 27th day of September 2019, I electronically served this document through the electronic filing system upon the following parties:

Thomas G. Briody, Esq. (#4427)
Tbriodylaw@aol.com

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The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Marc DeSisto